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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
The Development of a National Framework to	)	
Detect and Deter Backsliding to Ensure	)	RM 9474
Continued Bell Operating Company Compliance	)	
with Section 271 of the Communications Act	)	
Once In-Region InterLATA Relief is Obtained	)	

**COMMENTS OF PAC WEST TELECOM, INC.**

Pac West Telecom Inc. ("Pac West"), by undersigned counsel, submits these comments concerning the above-captioned Petition<sup>1</sup> filed by Allegiance Telecom, Inc. requesting that the Commission establish a national framework to detect and deter backsliding by Bell Operating Companies ("BOCs") once interLATA authority is granted pursuant to Section 271 of the Communications Act of 1934, as amended.<sup>2</sup>

Pac West is one of the oldest privately owned telecommunications providers in California. Pac West provides local and long distance services to business customers in California, including toll-free 800 and 888 services, over advanced fiber optic networks. Pac West offers state-of-the-art digital services including ISDN, T-1, and 56kbps services.

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<sup>1</sup> Petition for Expedited Rulemaking filed February 1, 1999 by Allegiance Telecom, Inc., RM 5474.

<sup>2</sup> 47 U.S.C. Section 271.

## **I. SECTION 271 BACKSLIDING IS A SIGNIFICANT RISK**

By the amendments to the Communications Act enacted in the Telecommunications Act of 1996,<sup>3</sup> Congress sought to achieve a competitive environment for the provision of local telecommunications services. Section 251 (c) seeks to promote competition by imposing on incumbent local exchange carriers ("LECs") key market-opening requirements concerning interconnection, access to unbundled network elements ("UNEs"), and resale.<sup>4</sup> At the same time, in Section 271, Congress sought to achieve local service competition by providing an incentive for BOCs to open their markets to competition by permitting them to provide interLATA service once they have complied with the competitive checklist and other requirements of Section 271.<sup>5</sup>

However, once a BOC has gained interLATA authority it will have no incentive to continue to comply with the requirements of the competitive checklist. The Commission has recognized that grant of interLATA authority prior to compliance with Section 271 will impair BOC incentives to comply with the competitive checklist.<sup>6</sup> Moreover, once authorized to provide interLATA service a BOC would have a heightened incentive to discriminate against competing interexchange carriers.

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<sup>3</sup> Pub. L. 104-104, Title VII, Sec. 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. Sec. 157.

<sup>4</sup> 47 U.S.C. Section 251(c).

<sup>5</sup> 47 U.S.C. Section 271.

<sup>6</sup> *Petitions for LATA Association Changes by Independent Telephone Companies*, CC Docket No. 96-158, Memorandum Opinion and Order, 12 FCC Rcd 10529 (1997). *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, CC Docket No. 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646 (1997).

In addition, Pac West submits that BOCs' efforts to gain interLATA entry to date reflect an approach to obtain Section 271 approval on the basis of the least permissible compliance with the competitive checklist. Thus, BOC Section 271 applications seek to ascertain the minimum level of compliance that regulators will accept rather than presenting a picture of whole-hearted acceptance of the market-opening provisions of the Act. SBC, in particular, in state proceedings, has sought to go no higher than the bottom rung of compliance. It has also attempted to obviate the need for any compliance by seeking to have Section 271 declared unconstitutional.<sup>7</sup> Similarly, in response to *AT&T Corp. v. Iowa Utilities Board*,<sup>8</sup> BOCs are seeking to define their obligations to provide access to unbundled network elements in the most minimal possible way.<sup>9</sup> Accordingly, Pac West submits that there is genuine risk that once a BOC gains interLATA entry it will seek to evade or thwart compliance with the requirements of Section 271.

## **II. BOC BACKSLIDING COULD SUBSTANTIALLY IMPAIR COMPETITION**

Pac West submits that a BOC's evasion or minimization of compliance with the competitive checklist once it is authorized to provide interLATA service could have devastating impacts on competition and achievement of the pro-competitive goals of the Act. In particular, access to a

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<sup>7</sup> *SBC Communications, Inc. v. FCC*, 981 F.Supp (N.D. Texas 1997), *rev'd* *SBC Communications v. FCC*, 13 Communications Reg. (P& F) 458 (5th Cir. 1998).

<sup>8</sup> 119 S. Ct. 721 (1999).

<sup>9</sup> See e.g., *Ex Parte* letter from Lynn Starr, Vice President Regulatory Affairs, Ameritech, to Secretary, Federal Communications Commission, February 18, 1999, CC Docket No. 96-98; *Ex Parte* letter from Kathleen Levitz, Vice President-Federal Regulatory to Secretary, Federal Communications Commission, February 16, 1999, CC Docket No. 96-98.

BOC's' operations support systems ("OSS") on the same terms and conditions as the BOC uses in its own provision of service ("parity access") is essential to competitive LECs' ability to compete successfully in the local service market. BOCs generally provide competitive LECs access to competitive checklist items through the use of OSS. Discrimination in access to OSS could substantially impair the ability of competitors to obtain UNEs, unbundled loops, unbundled transport, 911 and E911 services, directory assistance services, operator services, directory listings, telephone numbers, and signaling networks and related databases.<sup>10</sup> Thus, discriminatory access to OSS could produce substantial disadvantages in competitors' ability to provide adequate and timely levels of service essential to effective competition. Accordingly, Pac West submits that if a BOC's levels of compliance with OSS requirements diminishes after it gains interLATA entry it could have substantial deleterious impacts on competition.

### **III. RULES, IN ADDITION TO CONDITIONS ON SECTION 271 APPLICATIONS, ARE NECESSARY TO PREVENT BACKSLIDING**

Pac West believes that conditions on Section 271 approvals could be a mechanism for imposing backsliding measures. Indeed, Pac West submits that any backsliding measures developed as an outgrowth of this proceeding should be imposed as conditions on any Section 271 authorization. However, the 90 day time period for reviewing BOC Section 271 applications does not provide enough time for the Commission to consider and develop sufficient backsliding safeguards. Accordingly, the Commission should promptly initiate the rulemaking requested in the

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<sup>10</sup> See 47 U.S.C. Section 271(c)(2)(B)(ii), (iv)-(xi).

Petition to develop appropriate safeguards so that they will be available if and when a BOC is able to obtain Section 271 authorization.

Moreover, rules are preferable to imposing backsliding safeguards solely in the context of Section 271 applications. Rules of broad applicability are most likely to be effective in promoting the pro-competitive goals of the Act which Congress intended to be achieved everywhere. At the same time, adoption of rules will not foreclose states, or the Commission, from establishing supplementary backsliding safeguards in the context of individual BOC applications for interLATA entry. Therefore, Pac West submits that the Commission should include backsliding rules among its pro-competitive regulatory tools and should promptly institute the requested rulemaking.

#### **IV. THE SPECIFIC PROPOSALS IN THE PETITION SHOULD BE OFFERED FOR COMMENT**

Pac West believes that the Petition identifies important and valuable backsliding measures that the Commission should propose and offer for comment. In particular, the Commission should establish verifiable national minimum standards for BOCs' provision of each of the checklist items. These standards should address and define acceptable parity access to OSS, interconnection, collocation, access to rights of way and intra-building wiring, among other areas. These standards, properly crafted and combined with monitoring and detection measures, could help assure that BOCs continue to comply with Section 271 requirements after interLATA entry. Pac West encourages the Commission to obtain a complete record on state efforts concerning Section 271 safeguards to date to serve as a foundation for consideration of appropriate safeguards.

Pac West supports the establishment of special procedures for the Commission to entertain complaints concerning BOC violations of Section 271 requirements and backsliding measures. Pac West submits that the importance of Section 271 requirements to achieving a competitive market for provision of local telecommunications services, and the harm to competition that could be caused by backsliding, warrants the institution of a special administrative and regulatory program to resolve such complaints. Congress recognized the importance of Section 271 compliance when it provided that the Commission must resolve complaints concerning Section 271 within 90 days.<sup>11</sup>

Pac West also believes that appropriate penalties for violations of Section 271 requirements should be a part of the Commission's backsliding safeguards. The three tier approach suggested in the Petition to address increasing levels of violations comprised of UNE price reductions, suspension of Section 271 authority to serve new long distance customers, and fines is appropriate.

#### **V. BACKSLIDING SAFEGUARDS SHOULD BE FOUNDED ON STRICT INITIAL COMPLIANCE WITH SECTION 271**

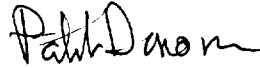
Although the Commission should promptly institute a rulemaking to establish backsliding measures, Pac West stresses that rigorous adherence to Section 271 standards as the condition of interLATA entry will continue to be essential to achieving local service competition. Thus, backsliding safeguards will not be efficacious in achieving the goals of the Act if the starting point of interLATA entry does not strongly promote competition. Accordingly, Pac West urges the Commission to insist on a full effectuation of the requirements of Section 271 as a precondition to any interLATA entry.

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<sup>11</sup> See 47 U.S.C. Section 271(d)(6).

## VI. CONCLUSION

For these reasons, Pac West respectfully requests that the Commission grant the Petition.



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Dated: March 8, 1999

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**CERTIFICATE OF SERVICE**

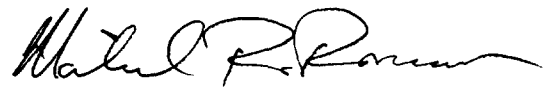
I hereby certify on this 8th day of March 1999, that copies of the foregoing COMMENTS OF PAC WEST TELECOM, INC., were served via Messenger\*\* or U.S. Mail, postage prepaid, upon the following parties:

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